

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MAR POYYAK

Claimant

VS.

MEADOWBROOK MANOR OF HAYSVILLE

Respondent

AND

ZURICH-AMERICAN INSURANCE GROUP

Insurance Carrier

Docket No. 204,698

ORDER

Respondent appeals from an October 10, 1995 Preliminary Hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The issue to be considered on appeal is whether claimant's injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Reviewing the record and considering the arguments of the parties the Appeals Board finds:

- (1) The issue raised on appeal is one subject to review. K.S.A. 44-534a.
- (2) The Appeals Board finds the evidence does establish claimant's injury arose out of and in the course of his employment and should be affirmed.

Claimant, a certified nurse's aide, was injured on March 20, 1995 when a patient's wheelchair jerked and landed on claimant's foot. He testified that it cracked the skin and made a large blood blister underneath the toes. He so testified that he had not been having problems with his foot prior to the injury and that he continued to have pain thereafter. On March 23, 1995 claimant showed his foot to a nurse at the nursing home. The nurse referred him to Dr. Romulo Magsalin. After three visits, Dr. Magsalin recommended that he see his own doctor or go to the hospital. His own doctor, Dr. Richard Guthrie, referred claimant to Dr. Anthony Pollock. Dr. Pollock identified an infection. Dr. Pollock did a debridement on March 30, 1995 and ultimately an amputation of claimant's toe on June 7, 1995.

Respondent points out that the claimant suffers from diabetes and argues that claimant has failed to establish that his injury arose out of and in the course of his employment. Specifically, respondent asserts that there is no medical evidence in the record which makes a connection between the wheelchair rolling over claimant's foot and the infection which led to the amputation of the toe. The report of Dr. Pollock first

describes the accident as one which occurred when a wheelchair ran over claimant's foot. Dr. Pollock then states: "The history of injury and the degree of injury that I saw is entirely consistent with his description of the accident." The opinion stated by Dr. Pollock does not affirmatively connect the accident and subsequent infection; the opinion only states the two were consistent. However, in the absence of other explanation and coupled with the history given by claimant, the Appeals Board finds claimant has met his burden.

WHEREFORE, the Appeals Board finds the October 10, 1995 Preliminary Hearing Order entered by Administrative Law Judge John D. Clark should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director